



TECHNICAL ASSISTANCE ADVISORY

T 03-02

TO: Life Insurers and Fraternal Benefit Societies

SUBJECT: Standard Nonforfeiture Law for Individual Deferred Annuities

DATE: June 12, 2003

The purpose of this Technical Assistance Advisory is to notify life insurers and fraternal benefit societies that the Office of the Insurance Commissioner is modifying prior interpretations of RCW 48.23.440. The interpretations involve the requirements for paid-up annuity, cash surrender, and death benefits for contracts whose minimum values are based on the minimum nonforfeiture amounts.

BACKGROUND

The Office of Insurance Commissioner interpreted RCW 48.23.440(1) to require the crediting of at least 3%, the "minimum interest rate" in the statute, on an annual basis. In addition, this office interpreted "increased by any existing additional amounts credited by the company to the contract" to apply to amounts credited to an annuity contract in excess of the minimum. Consequently, these excess amounts became part of the minimum nonforfeiture amount.

These interpretations resulted in the disapproval of some contracts that guaranteed at least the minimum interest rate for the life of the contract (until payment or settlement) but did not guarantee the minimum interest rate for each year. Many of the disapproved filings were equity-indexed annuity contracts.

The Office of the Insurance Commissioner understands that other jurisdictions interpret the standard nonforfeiture law differently in their review of annuity form filings. Those jurisdictions do not find filings to violate the standard nonforfeiture law when the contract provides minimum nonforfeiture values equal to the net purchase payments (as defined in the contract) accumulated at the minimum interest rate.

After review of the issue and the interpretations across the United States, the Commissioner has decided to change the interpretation of the minimum nonforfeiture provisions in Washington.

MODIFICATION OF REQUIREMENTS

Effective immediately, form filings for annuity contracts will no longer be disapproved on the basis that they do not comply with RCW 48.23.440 solely because they fail to guarantee at least the minimum interest rate on an annual basis. Guaranteed contract values in excess of the minimum nonforfeiture amount are not presumed to be “additional amounts credited by the company to the contract.”

Form filings made in response to this Technical Assistance Advisory must satisfy the following:

- Contracts must guarantee benefits equal to or in excess of the minimum nonforfeiture amount.
- The insurer must accumulate the net purchase payments at a rate of interest not less than the minimum interest rate for the life of the contract.
- The contract must define the net purchase payments that accumulate at a rate of interest not less than the minimum interest rate for the life of the contract.
- If the net purchase payments in the contract are less than the net considerations specified in RCW 48.23.440, the reduction must be characterized as a sales charge. The contract may not be marketed or advertised as having no “sales load” or having no “front-end charges.” Any suggestion that the contract has no “sales load” or no “front-end charges” is misleading and a violation of RCWs 48.30.040 and 48.30.090.
- Contract charges and collection charges cannot exceed the lesser of:
 - (1) The amounts specified in RCW 48.23.440; or
 - (2) The gross considerations credited to the contract in the period for which the charges apply.
- No sales charge, surrender penalty, or combination of both, may exceed the percentage reduction in net considerations specified in RCW 48.23.440.
- In the absence of withdrawals or partial surrenders, no contract value may decrease at any time. “Contract value” means the value of any paid-up annuity, cash surrender, or death benefit under the contract. The contract may allow windows of time during which surrender penalties are waived.
- If the value of any paid-up annuity, cash surrender, or death benefit provided could fail to increase by at least the minimum interest rate in any contract year, the form must prominently disclose this fact on its face page or specifications page.

Questions concerning this Technical Assistance Advisory should be directed to Alan Hudina, Life and Disability Manager, Rates and Forms Division, at (360)725-7126 or AlanH@oic.wa.gov.